

7:00 p.m. meeting opened. The Hall, 2nd Floor, Memorial Hall Library, Elm Square.
Present were: Anderson (Chair), McDonough (Clerk), Jeton, Batchelder, Brown, Baime

Request for Minor Modification of Decision #3684
Premises Affected: 176 River Rd

Inspector of Buildings Kaija Gilmore presented a request for a minor modification to allow a section of 2-way drive that is 20' wide at the rear of the lot, rather than the required minimum 24' wide. She explained that after the Petitioners obtained zoning approval, they went through Site Plan Approval with the Planning Board where the zoning incompliance was not dealt with. She herself didn't catch upon review & issuance of a building permit, therefore the 20' drive has been constructed. There is no permitting left for the project except the Conservation Commission's Certificate of Approval. Gilmore noted that staff uses the 20' drive only & that the large percentage of wetlands on the lot highly restricts the area for construction. The Fire Prevention office has reviewed the plans & requires a minimum 18' wide drive for safety vehicle access. Anderson asked Attorney Andrew Caffrey, who was present for another hearing, whether he continued to represent the veterinary hospital & whether the issue came up before. Caffrey stated that he continues to represent them & that the issue may have been put off to Conservation Commission or Planning. Anderson suggested modifying the prior decision or a variance application to legalize the 20' wide drive. Caffrey asked for a minor modification noting that the six-year grandfather clause will take care of the non-conformity. The Board commented that the modification would be consistent with the prior decision and that the buildable area is restricted due to wetlands are hardships. Batchelder asked for the number of employees. Petitioner stated there are six employees, but eight spaces at the rear of the building. The Board suggested erecting a caution sign. Brown noted that this issue didn't come up at the hearing and requires an additional variance. He urged the Board to follow proper procedure to keep title clean, as this isn't a minor modification. Jeton disagreed because several permitting authorities reviewed it after the ZBA and that it is a very minor modification. Gilmore added that she spoke with Planning staff and they don't want to re-open the case. McDonough made a motion to close the informal discussion. Batchelder seconded the motion & the Board voted unanimously to close the informal discussion. Baime & Ranalli sat off. Batchelder made a motion to approve the minor modification to narrow the drive to 20' as shown on the plans. McDonough seconded the motion and the Board voted (4-1) (Brown opposed for procedural reasons) to allow the minor modification. Batchelder will write it.

Petition No: 3806
Petitioner: Helman
Premises Affected: 106 Main Street
Present were: Anderson (Chair), McDonough (Clerk), Baime, Batchelder, Brown

Anderson noted that the Petitioner granted the Board an extension until Jan. 5, 2009 to file a decision. Andrea Helman represented herself in her request to remove the condition of owner occupancy for her 4-unit dwelling. It conformed to the by law at the time the original relief was granted. Brown made a motion to close the public hearing.

McDonough seconded the motion & the Board voted (5-0) to close the hearing. McDonough made a motion to delete the condition requiring owner-occupancy. Brown seconded the motion & the Board voted (5-0) to delete the condition as requested. Brown will write the decision.

Petition No: 3815

Petitioner: Warren

Premises Affected: 7 Reservation Road

Present were: Anderson (Chair), McDonough (Clerk), Jeton, Brown, Ranalli

Mark Johnson represented the petitioners' & waived a reading of the legal ad. The Warrens request a variance for the continued existence of their non-conforming lot as to area. In their prior application for an addition, they discovered the deed was incorrect. Thus the current request for the continued existence of a lot with insufficient area. Anderson confirmed that this was to cure a minor deficiency in the area of the lot, noting that the shape is irregular. McDonough made a motion to close the public hearing. Brown seconded the motion & the Board voted (5-0) to close the hearing. Anderson pointed out that the size/area + shape of the lot is a hardship. Brown added that there is no remedy & the statute of limitations has expired. Anderson stated that they are to assume the new survey is correct. Anderson asked for a vote of those in favor of granting the variance. The Board voted unanimously to grant the variance. Jeton will write the decision.

Petition No: 3816

Petitioner: Naughton

Premises Affected: 8 Summer Street

Present were: Anderson (Chair), McDonough (Clerk), Brow, Jeton, Batchelder, Baime, Ranalli

Joseph & Christine Naughton represented their request for a variance from 4.1.2 &/or a special permit under 3.3.5 to construct an 8'x8' rear deck that will not meet side setbacks. The existing house is non-conforming & the new deck wouldn't be closer to the lot line than the house. Anderson pointed out that the site plan depicts a 12'x8' deck. Naughton stated that they wish to build an 8'x 8' deck. Jeton noted that the proposed setback would be 11.23' for an 8'x8' deck. The stairs will be to the rear. The existing house was built in 1905 & the deck will be 4' above grade. The nearest abutting house is setback approximately the same as the Naughtons'. Petitioners have spoken with neighbors & they are not in opposition. Brown made a motion to close the public hearing. Batchelder seconded the motion & the Board voted unanimously to close the hearing. McDonough made a motion to grant a special permit to construct an 8'x8' deck. Anderson added that the condition that the deck may be no closer than 11.23' to the side lot line. Brown suggested that the condition state 'not any closer than the existing house'. Anderson agreed, reiterating that the motion is for an 8'x8' deck with the condition that it not be constructed any closer to the side lot line than the existing house. Batchelder seconded the motion. Brown & Jeton sat off the case. The Board voted (5-0) to grant the special permit with condition. McDonough will write the decision. Batchelder made a motion to

deny the variance as moot. Ranalli seconded the motion & the Board unanimously denied the variance as moot.

Petition No: 3817

Petitioner: Sakakeeny

Premises Affected: 103 Chestnut Street

Present were: Anderson (Chair), McDonough (Clerk), Jeton, Batchelder, Brown, Baime

Andrew Caffrey, Esq., represented Mr. & Mrs. Sakakeeny in their request for a variance from 4.1.2 &/or for a special permit under 3.3.5 to construct additions & alterations that would connect the existing detached, non-conforming garage to the existing house. Caffrey noted the lot is long/deep with 58' frontage & 200' depth. Roger's Brook abuts it to the rear & that the additions will meet setbacks. They wish to shore up the garage & add a second story above it. The right side setback is 16.81'. The Board discussed the scope of the proposed connection of the house to the garage & that it would increase the non-conformity with a second story over the garage. Caffrey argued that it is an extension of a prior non-conformity. Jeton answered that it is not eligible for a special permit because it changes the status of the garage. Arlene Androkites, immediate abutter to the garage side of the lot voiced many concerns, asking if there would be a bathroom in the garage. Mr. Sakakeeny stated that no water would be installed in the garage, that it would be an entertainment room. Androkites opposed the proposal based on its size, drainage/water/run-off issues & snow removal issues. Her house is setback approximately 10-15' from the lot line. Batchelder voiced concern over whether this is eligible for a special permit. Brown asked if a structural analysis has been done on the Sakakeeny garage regarding the foundation, built in 1917. Mr. Sakakeeny stated that they plan on replacing the foundation. There was some discussion on whether the entire garage would be rebuilt & that they'd have to go on the Androkites' lot to do so. Caffrey argued that a foundation could be put under the existing structure. The proposed garage roofline is designed to decrease run-off onto the abutting lot, but the 1' overhang will encroach over the lot line. Batchelder & McDonough volunteered to sit off the case. The Board waived a site view. Jeton made a motion to close the public hearing. Ranalli suggested they withdraw their application. Anderson explained to Caffrey that if the Board denies it, they would be ineligible to re-apply for the same proposal for two years. Caffrey stepped out of the room to speak with his clients. The Board then proceeded with the next hearing.

Petition No: 3814

Petitioner: Carolina Properties

Premises Affected: 407 South Main Street

Present were: Anderson (Chair), McDonough (Clerk), Jeton, Brown, Ranalli

This is a continued public hearing. Gerald Welch, petitioner, & Bill McLeod, engineer, were present. McLeod submitted a revised plot plan dated 12/3/08. Welch submitted revised architectural renderings & gave an overview of the changes since the last meeting. The proposed setbacks: left = 31', right = 22'; front = 55'; rear is in excess of 30'. The house is narrower. The analysis of the abutters' side setbacks hasn't been done,

but Welch believes the nearest to be 22'. The wetlands were flagged & they will file with Conservation Commission. Jeton voiced concern for the lot line dispute raised at the last meeting, which hasn't been dealt with. McLeod noted that the plan of record that they used to do the survey is accurate. Ranalli asked for the building height. Welch stated it was lowered by 1.5'. McDonough made a motion to close the public hearing. Jeton seconded the motion & the Board voted unanimously to close the hearing. They then proceeded to deliberate. Anderson commented on the appropriately improved re-design. Brown noted that similar projects have been done in the neighborhood. McDonough made a motion to approve a special permit in conformance with the revised plans. Brown noted the special permit would be under section 3.3.7. Jeton seconded the motion & the Board voted unanimously to grant the special permit. Brown made a motion to deny the variance as moot. Jeton seconded the motion & the Board voted (5-0) to deny the variance as moot. Ranalli will write the decision.

Brown then made a motion to approve, with Jeton's revisions, the 5/8/08 minutes. Jeton seconded the motion & the Board voted unanimously to approve the minutes as amended.

Anderson left the room, because he routinely recuses himself from all telecommunication matters, so that Town Counsel Thomas Urbelis could have an informal discussion about changes to the Telecommunications Act (TCA) with the Board.

Present were: Town Counsel Thomas Urbelis, McDonough, Jeton, Ranalli, Batchelder, Baime, Brown.

- Urbelis reminded the Board that the TCA supercedes state & local law.
- It was enacted by Congress in 1996 to promote competition and higher quality telecommunications services, encourage rapid deployment of new telecommunication technologies by reducing impediments by local governments' upon installation of wireless communications facilities.
- TCA imposes specific limitations on traditional authority of state/local governments to regulate the location, construction & modification of such facilities.
- The applicable principles are:
 1. [The Board] can't unreasonably discriminate between providers
 2. [The Board] can't prohibit provision of personal wireless services
 3. [The Board] can't limit the placement of facilities based on environmental effects of radio frequency emissions (this is regulated by the FCC regulations as ruled on by the Supreme Judicial Court)
 4. [The TCA] requires denials to be in writing and supported by substantial evidence (i.e. witnesses, documents, reports, etc.). The decision does not have to cite the evidence as long as it's in the record (file).

The Attorney General reviews/approves the local by law simply on its face to see if it violates state law, *not federal law*.

Variances in relation to telecommunications facilities are not based on soil conditions/shape/topography, but on factors of a particular application & whether the decision results in an effective prohibition of wireless services (a supply challenge).

Urbelis will send a memo regarding the challenges to look for:

1. Engineering evidence of a substantial gap in coverage for that carrier;
2. Compliance with filing requirements of the by law;
3. The carrier provides a structural analysis of the tower;
4. Evidence of a legal right to the site;
5. Provide evidence that an alternative site is not available to close the gap (alternative = available & practically feasible)
 - a. The burden is on the carrier to prove that there is no alternative site available
6. Evidence that collocation is not available;
7. Evidence of compliance with FCC standards;
8. Evidence of aesthetics test (balloon tests);
9. Evidence from other boards (i.e. historic)
10. Provide funds for the Board to conduct a peer review of their engineer's information.

Opponents should provide documents to the contrary (i.e. written engineering reports, alternative locations, legal arguments from an attorney, devaluation of property values for their property (not in general), proof of negative aesthetic effect, written communications articulating what they want the Board to decide.

The Board's decision:

1. Shall have a peer review & the applicant will pay for it per Zoning By Law. Peer reviews can examine structural safety, coverage, alternative sites, among others.
2. Cannot prohibit wireless services if there is a gap.
3. An aesthetic denial must have specific evidence. The applicant shall document all efforts to obtain alternative locations.
4. Cannot be based on environmental / health effects (i.e. cancer).

The meeting adjourned at 9:02 p.m.